The Analysis of the Anticipated Effects on the Environment: Comparing Opinions Concerning the Central versus Local Government's Views on the Three Gorges Project in China as Well as U.S. Views on it from 1992–2006

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Abstract

The purpose of this paper is to explore in detail the conflicting views between the local and national governments within China and the broader areas surrounding the struggles China's leadership faces as it deals with the Three Gorges Project. The project is the largest dam ever built. The Three Gorges Project is presenting to the leadership of China the challenge of forgoing international assistance from the United States and the World Bank in an effort to deliver to its people a source of "clean" electricity.[1] In the end, this paper will argue that the Chinese leadership, including the current President HU Jintao,[2] may well have been correct in building the Three Gorges Project, even with the terrible human toll that it continues to extract, because the other alternatives—namely the continued building of more coal-burning plants and/or the building of additional nuclear power plants[3]—may be a greater evil to the environment in the long run.

This paper addresses three areas: I; Differing Views from the Central versus the Local Governments, II; The Three Gorges Project, and III; The Clinton Administration versus the George W. Bush Administration—The Future of U.S.-China Foreign Relations.

I. Differing Views from the Central versus the Local Governments

China is in a period of real change as more people from the countryside demand rights based upon its 1982 Constitution. It is this Constitution that will

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[1] William Shapiro, *Human Rights and the Environment: IV. China's Three Gorges Dam*, 1997 Colo. J. Int'l Envtl. L. Pol'y 146, 152-55 (1997).

[2] The World Factbook: China, *available at* https://www.cia.gov/library/publications/the-world-factbook/geos/countrytemplate_ch.html (last visited Sept. 2, 2009).

[3] *See* Jim Yardley, *China's Economic Engine Needs Power (Lots of It)*, N.Y. Times, Mar. 14, 2004, § 4, at 3, *available at* http://www.nytimes.com/2004/03/14/weekinreview/the-world-china-s-economic-engine-needs-power-lots-of-it.html.

play a greater role as more local Chinese will argue their cases before the courts.[4] Some of the biggest changes have come first, in the way the law is viewed and second, in the role that lawyers have been both viewed and used by the average citizen. In the end, it is President Jintao and those in the State Council who are appointed by the National People's Congress (NPC) that give direction to their nation. This direction, in turn, affects those in the rural areas. Yet, it is the daily lives in the rural areas that will be affected by the Beijing leadership and that will ultimately pay the price—good or bad—for the decisions regarding the Three Gorges Project.

Under the traditional ideology of the Qing legal system, there existed the idea that the person had no rights.[5] This absolute theory of power predominated much of early Chinese Law, and it was an ideology that continued into recent times. This is especially apparent with regards to what many in the West consider basic human rights. To be exact, one might say that under traditional Chinese law (post-1900s), there was the sense that the government was the "parent" and the worker "the child."[6] As Stephens explained, "The consistent use by the Chinese themselves, since very ancient times, of the 'father and mother' image of state authority invites, if it does not demand, a disciplinary interpretation of social order in China."[7] It is perhaps this approach that has allowed the Chinese government to rule over its people, and when necessary, to force onto them changes that few Westerners would allow.

Governmental and local perspectives differ on what might be acceptable practices by the government with regards to human rights. It is this cultural difference regarding human rights that Li has argued led to a misunderstanding by the West of how China views human rights issues.[8] As Li concluded, "The United States and China are so different that one should not expect methods suitable for one society to be appropriate for the other."[9] It is a struggle to understand Chinese human rights from a Western perspective, and one must always realize that the views within this paper are written through an imperfect lens.

This flawed view has influenced the way that the West (noticeably the U.S. leadership) has viewed Chinese human rights. It is perhaps this misaligned view

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[4] There are four levels of courts within China: 1) The Supreme People's Court (SPC), 2) High People's Courts (HPC), 3) Intermediate People's Court (IPC), and 4) Basic People's Courts (BPC). *See* Randall Peerenboom, Laws. Comm. for Hum. Rights, Lawyers in China: Obstacles to Independence and the Defense of Rights 1 (1998) [hereinafter Peerenboom, Lawyers in China]; Randall Peerenboom, China's Long March toward Rule of Law 283 (Cambridge University Press 2002) [hereinafter Peerenboom, China's Long March]. There are also over 17,000 People's Tribunals within China that operate in a similar fashion to the BPC, and whose rulings have the same legal effect. Peerenboom: China's Long March, *supra* note 4, at 283.

[5] Philip C.C. Huang, Civil Justice in China: Representation and Practice in the Qing 76, 108 (Stanford University Press 1996).

[6] Thomas B. Stephens, Order and Discipline in China: The Shanghai Mixed Court 8 (University of Washington Press 1992).

[7] *Id.*

[8] Victor Li, *Human Rights in a Chinese Context*, *in* Law, the State, and Society in China 335, 340 (Tahirih V. Lee ed., Garland Publishing, Inc. 1997).

[9] *Id.* at 349.

that may explain why the United States chose not to support the Three Gorges Project. It is a view that is both right and wrong, but one that will be struggled with throughout much of this paper. Peerenboom explained that it is unfair to look simply at what rights exist in China in a Western sense.[10] As Peerenboom explained, "Indeed, some claim that Chinese citizens enjoy rights unknown to their American counterparts: job placement and security, free access to medical care, and other 'economic rights' are most often cited."[11] Some believe these rights give the Chinese people a better lifestyle and overall life than their Western counterparts. Perhaps as Stephens might argue, the Chinese government has a right to look over its citizens and take care of them, as parents to their children.

Given this reality, then, perhaps it is within the right of the Chinese government to have a greater say in the lives of its citizens, as compared to what may be considered acceptable by Western standards. The challenge for the Westerner is to appreciate the diversity that exists within China and to accept that the Chinese government has the right to do what it believes is correct for its citizens. Yet rights can at times be abused with such megaprojects as the Three Gorges Project. For now, this paper will turn briefly to the area of land reform before addressing the more difficult issue of environmental rights and the struggle between the local versus central government given the recent changes to the Chinese Constitution.

A. Land Reform — Rural versus Urban Development

Perhaps few other areas are more central to a farmer than the ownership of his or her land. Yet in China ownership of land is not allowed. In the same way that one seldom washes a rental car, farmers could not be expected to improve their land because of the very real fear that such land would be taken away. The major reforms that came in the 1970s allowed small-scale farming enterprises and a greater level of movement of peasants to the cities, along with a decontrolling of the pricing in later years.[12]

Beijing, however, ensured by the 1980s and 1990s that there would be two economic (and land) systems—one for the cities and another for the rural countryside.[13] The change that has come about is a greater degree of autonomy for those in the countryside while having a greater degree of indifference to the government in Beijing.[14] However, part of the problem with these reforms is that Beijing has less control over what is going on with those living in the countryside. This loss of control has spilled over to what Ludman has described as the "floating population" of some 100 million in Chinese cities as more people from the rural farmland have chosen to move to the cities.[15]

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[10] R.P. Peerenboom, *What's Wrong with Chinese Rights?*, 6 Harv. Hm. Rts. J. 29, 29 (1993).

[11] *Id.*

[12] *See* Stanley Lubman, Bird in a Cage: Legal Reform in China after Mao 103-04 (Stanford University Press 1999).

[13] *Id.* at 109-10.

[14] *See id.* at 110-12.

[15] *Id.* at 119.

With this rise in people moving from the rural areas to the cities, the once-prevalent ideology that has served the Chinese government for so long is now evaporating.[16] This evaporation has increasingly isolated the Chinese government from those living in the countryside. This isolation may give a greater degree of understanding as to why those in Beijing do not feel it necessary to take major actions to ensure that those who are removed from their lands to make room for the Three Gorges Project will receive adequate care, both financially and through future job security. This isolation has increased as rural communities take less notice of the directives from the central government in Beijing.[17]

The politics of the rural community are very different from those in the major cities. Yet, those in the rural communities may actually long for attention from those who are higher than their local community leaders due to a belief that the local leadership is corrupt. There is a greater degree of distrust at the local level for what Kevin O'Brien and Lianjiang Li have argued is the very real degree of corruption that commonly exists with "favoritism" toward one group over another.[18] This has caused a greater degree of continued distrust of those making the reforms.

Yet, the reality is that China has started to move away from state ownership[19] to a more market-driven system where grants for land are being given for commercial purposes for 40, 50, or even 70 years.[20] One of the more recent problems for those on the farms has been the "taking" of their land with limited compensation. As Ding explains, the surge in urban development has led to the government acquiring land: "Both the Chinese Constitution and the 1999 Land Administration Law (LAL) specify that the state, in the public interest, may lawfully requisition land owned by collectives, thus setting the stage for compulsory land acquisition."[21] The problem, as Ding explains, is that there is no way of knowing how much to pay the farmers for the land that was taken.[22]

As it turns out, the farmers in fact receive very little for the land that is taken by the government.[23] In fact, the vast majority of the money is first given to a collective, with very little given to the farmer whose land was acquired. This has only led to mistrust and strife between the local rural farmers and those in the government who complete the acquisition.

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[16] *Id*. at 121.

[17] *See* H.L. Fu, *Shifting Landscape of Dispute Resolution in Rural China*, *in* IMPLEMENTATION OF LAW IN THE PEOPLE'S REPUBLIC OF CHINA 179-95 (Jianfu Chen, Yuwen Li & Jan Michiel Otto eds., Kluwer Law International 2002).

[18] *See* Kevin J. O'Brien & Lianjiang Li, *The Politics of Lodging Complaints in Rural China*, CHINA Q., Sept. 1995, at 760-67.

[19] *See* PATRICK A. RANDOLPH JR. & LOU FIANBO, CHINESE REAL ESTATE LAW (Kluwer Law International 2000).

[20] *See* Chengri Ding, *Effects of Land Acquisition on China's Economic Future*, 16 LAND LINES 11, 11 (2002), *available at* https://www.lincolninst.edu/pubs/dl/867_Jan%202004%20final.pdf.

[21] *Id.*

[22] *Id*.

[23] *Id*.

Anticipated Effects on the Environment: Three Gorges Project

The land reform that has occurred in China has focused on allowing greater access to land that can be leased for ever-greater periods of time for both governmental and commercial purposes. In the process, however, there have been abuses due to expansion into the countryside of both state and foreign companies that have taken land from the local farmers.[24] The farmer's basic attitude has been negative based upon a mistrust of those who have taken the land.[25] This has been especially true with regard to the acquisition of land for public purposes.[26] Seemingly, this process will only continue as more foreign investment continues and as the state acquires even more land for its commercial purposes. Yet, there are two sets of rules in China — one for the rural areas and another for the urban areas. As the two collide, it is speculated that the rural areas will continue to suffer.

B. The Constitution and the Changing Views Regarding the Rights Contained Within

Over the years, the main thrust of the laws has come from the Chinese Communist Party (CCP), with perhaps only lip service given to its 1982 Constitution. Yet the articles within the 1982 Constitution address many of the same issues as its Western counterparts.[27] As Jones points out, "Power is said to belong to the people, but it is exercised by what looks like an indirectly elected parliament, the National People's Congress (NPC)."[28] Given that the parliament meets only once a year and has over 3,000 members, it is really the central committee of the NPC that controls the laws that are sent out. It is perhaps this conflict between the laws given by the NPC and those that are within the Constitution that has continued to cause much strife. In the end, as will be explained later, it may yet be the Constitution that wins.

The struggle that is so common with land reform between the rural areas and the Beijing central government is also present within the 1982 Constitution. As Jones notes in his article, "The preamble [of the Constitution] begins with the history of the struggle of the people against feudalism and imperialism . . . Article I states that China is a people's democratic dictatorship."[29] What the Constitution clearly states is that the leadership of China, i.e., the democratic dictatorship, shall govern the proletariat. However, as has been explained above, there is a growing sense of isolation between the rural areas and those in leadership positions in Beijing.

How, therefore, can one come to grips with this supposed conflict? Part of the solution may come from the central government itself as it starts to take more seriously the provisions contained within the Constitution. Once this starts to

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[24] *Id.* at 13.

[25] *See* O'Brien & Li, *supra* note 18.

[26] *See* Ding, *supra* note 20.

[27] *See* William C. Jones, *The Constitution of the People's Republic of China*, 63 WASH U. L. Q. 707 (1988).

[28] *Id.* at 708.

[29] *Id.* at 726.

occur, those who live in the more rural areas might be willing to listen more carefully to the actions being taken by the leadership in Beijing.

In what has been termed China's *Marbury v. Madison*,[30] the Supreme People's Court in a civil suit used the 1982 constitutional provisions "to protect a citizen's right to receive education, one of the fundamental rights protected by the Constitution."[31] In the Qi Yuling case, Kui explains,

> [T]he Supreme People's Court established its basic premise that the Constitution could be judicially applied when defects or gaps emerge in ordinary laws and regulations. From this premise, it follows that in any dispute, whether between private entities (private law relationship), or between a private entity and the State, or a public entity that exercises public power (public law relationship), courts can apply the Constitution.[32]

Thus, the Constitution will play a significant role — as compared to years past —in the decisions of the courts. This is especially true as it relates to justice, the taking of land and possible issues with the displacement of people around the Three Gorges Project. For now, the Qi Yuling case firmly demonstrates that rights contained within the Constitution will be more observed.

1. The Constitution and the Environment

The closer observance of the 1982 Constitution by the Chinese courts will impact both the rural areas and the leadership in Beijing as it relates to the environment.[33] Specifically, Article 9 of the Constitution states in part, "The state ensures the rational use of natural resources and protects rare animals and plants. Appropriation or damaging natural resources by any organization or individual by whatever means is prohibited."[34] What the Constitution clearly states is that the natural resources shall not be damaged by any organization. The question, as will be raised in the next section, is the degree to which this may be applied to the Three Gorges Project.

However, Article 9 also states in part that the "state may, in the public interest, appropriate or requisition land for its use in accordance with the law."[35] As Ding points out, the question here is how the average farmer can argue against the takings of his or her land in the face of a clear article within the Constitution that

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[30] Shen Kui, *Is It The Beginning of the Era of the Rule of the Constitution? Reinterpreting China's "First Constitutional Case"*, 12 PAC. RIM. L. & POL'Y J. 199, 199 (2003).

[31] *Id.*

[32] *Id.* at 218.

[33] Homer Sun, Note, *Controlling the Environmental Consequences of Power Development in the People's Republic of China*, 17 MICH. J. INT'L L. 1015, 1022-23 (1996).

[34] Xian Fa [Constitution] art. 9, § 2 (1999) (P.R.C.), *available at* http://www.gov.cn/english/2005-08/05/content_20813.htm (adopted at the Fifth Session of the Fifth National People's Congress and Promulgated for Implementation by the Proclamation of the National People's Congress on December 4, 1982, as amended at the First Session of the Seventh National People's Congress on April 12, 1988, at the First Session of the Seventh National People's Congress on March 29, 1993, and the Second Session of the Session of the Ninth National People's Congress on March 15, 1999).

[35] *Id.* art. 10, § 3.

allows such a taking for "public interest" purposes.[36] The answer lies with the changing views of the application of the Constitution since the Qi Yuling case, because now what qualifies as "public interest" may be debated. Article 10 goes on to state that "[a]ll organizations and individuals using land must ensure its rational use."[37] The question here is deciding what constitutes "rational use" and for what purpose this might be used. In general, Article 10 clearly supports the government's position that it may use the land it has and may further acquire more when necessary. However, Sun points out that Article 10 "establishes a duty of persons and organizations to rational land use."[38] This is the duty that will be debated.

Additionally, Article 26 appears to further protect the environment when it states, "The state protects and improves the environment in which people live and the ecological environment. It prevents and controls pollution and other public hazards. The state organizes and encourages afforestation and the protection of forests."[39] It is hard to believe that this law will not be used in the future to challenge other major projects, such as the Three Gorges Project, on the assumption that the level of pollution derived from such a plan will only turn vast areas of factories and other former polluted areas into static swamps of hazardous chemicals as they are buried under a mountain of water. Perhaps in the same way that The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or the Superfund) is used in the United States,[40] Article 26 may be used to force cleanups of polluted sites and may further prevent them from occurring.

For now the Chinese government appears willing to take the power it has and force what it believes is best for China as a whole onto those rural areas that have become far more distant and independent from Beijing in recent years. Yet, the farmers and others are still not without means to protest. Those means will only grow as local courts become far more willing to use the Constitution to impact environmental regulations and laws.

For now, as Sun explains, courts have been reluctant to enforce environmental laws,[41] perhaps out of fear from their superiors. It is this very fear by the courts that needs to be replaced with a greater degree of confidence before any real legal amendments regarding environmental pollution caused by the state are enacted at the local level. Yet, the Beijing central government is making sure that the farmers of China are not left behind through the elimination of farm taxes within five years and grain subsidies worth $1.2 billion year.[42] However, even with this good gesture, the reality is that farmers in rural areas have been left behind.

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[36] *See* Ding, *supra* note 20.

[37] Xian Fa art. 10, § 5 (P.R.C.).

[38] Sun, *supra* note 33, at 1022.

[39] Xian Fa art. 26, §§ 1-2 (P.R.C.).

[40] *See* William H. Rodgers, Jr., Environmental Law 680-85 (2d ed. 1994).

[41] Sun, *supra* note 33, at 1024-25.

[42] *What They Are Saying*, China Daily, Mar. 25, 2004 (LEXIS).

It is this feeling of being left behind that perhaps has continued to cause fear and distrust among those in the rural areas of the courts and the government officials who run them. As Sun explains, "The Chinese judiciary has . . . been used to enforce environmental law through civil and criminal actions. While the use of the judiciary holds promise for the future as China's legal system continues to develop, litigation is inherently constrained by the international weaknesses of Chinese courts."[43] Litigation for now, as Sun notes, has been rendered ineffective.[44] However, that process may one day in the near future change with the recent rise in expectations of those in the rural areas for a greater say in how the government operates. Those in the rural areas may request a greater say in how the government enforces much of its laws governing environmental regulations and laws. This is especially true concerning the enforcement of those regulations upon both the commercial sectors that encompass the farmland and ultimately upon the district and higher-level governmental agencies that enforce them.

One of the basic problems that Sun points to is the general lack of criminal provisions against environmental pollution.[45] This is further explained by Ross and Silk, as they note,

> The Chinese Criminal Law does not provide for the crime of "harming the environment." This is not because the crime does not exist in this country, but because there was not thorough consideration during the enactment of the Criminal Law in the first place. In the areas of environmental law, although there is a provision with regard to criminal penalties, practical experience in the past has proved that no criminal who harms the environment may be brought under control without the enactment of specific substantive criminal law.[46]

As Ross, Silk, and Sun clearly state, there are no real criminal laws against the pollution of the environment. Therefore, even with constitutional provisions found within the Chinese Constitution in Articles 9, 10, and 26 with regard to the environment, without the clear ability to criminalize those who break them, those laws may be simply *paper-tigers* for now.

However, contrary to what Ross and Silk have argued, a more recent reading of *The 1997 Criminal Code of the People's Republic of China* (China's Criminal Code) clearly states in Section 6 — Crimes Undermining the Protection of Environmental Resources — that violations against the environment may allow the government to act against individuals or companies.[47] Article 338, for example, states,

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[43] Sun, *supra* note 33, at 1024.

[44] *Id*.

[45] *Id*. at 1025-26.

[46] Lester Ross & Mitchell A. Silk, Environmental Law and the Policy in the People's Republic of China 108 (Quorum Books1987).

[47] *See* Wei Luo, The 1997 Criminal Code of the People's Republic of China: With English Translation and Introduction 176-80 (William S. Hein & Co., Inc. 1998). See specifically articles 338 through 346. *Id*.

> Anyone who violates the national regulations by dumping or disposing any radiative wastes, wastes contaminated with contagious diseases, toxic materials or other dangerous wastes into land, water or air, thereby causing serious environmental pollution, and serious damage to public or private property is a consequence, or a death or injury to a human life occurs, shall be sentenced to a fixed-term imprisonment of not more than three years or criminal detention, and may in addition or exclusively be subject to a fine. Where exceptionally serious consequences are involved, the sentence shall be fixed-term imprisonment of not less than three years nor more than seven years, and may in addition include a fine.[48]

As Article 338 of China's Criminal Code clearly states, people can be imprisoned for violating a code that is intended to protect the environment. Furthermore, those who are caught are not given the same rights as many Westerners might expect, and in most cases can only be persuaded to plead guilty in the hope that the judge will reduce their sentence.[49] A basic problem, as Peerenboom pointed out, is that "citizens must know the law to be able to follow it and take advantage of the rights provided to them."[50] The struggle that may be going on in China now is that there are laws that individuals are slowly becoming aware of within the Constitution and China's Criminal Code that reflect rights for protecting the environment. The question, however, deals with enforcement and the willingness of the Chinese courts to take on those hard cases involving government officials and companies owned or operated by the state or those connected with high-level officials. Until such time, real change will not begin.

As the Qi Yuling case has established, however, the articles within the Constitution are being taken more seriously by the Chinese courts. The real question that remains is the degree to which the leadership in China will take seriously the problems of those in the countryside as they deal with the environment. If the recent tax breaks are any indication,[51] those in Beijing may be considering further the effects of the actions being taken in Beijing on those in the countryside. However, China's leadership in Beijing must come to terms on the one hand, with its actions that arguably violate some of its own laws on the environment, such as the Three Gorges Project, and, on the other hand, with the wish to be seen both by its local population and other countries that may provide assistance, as a nation that can develop a sustainable environment while taking into account both local and central government issues. The Chinese central government has started this process with Agenda 21.

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[48] *Id.* at 176.

[49] Peerenboom, Lawyers in China, *supra* note 4, at 19 (1998).

[50] Peerenboom, China's Long March, *supra* note 4, at 330.

[51] *See What They Are Saying*, *supra* note 42.

C. Agenda 21 and its Effects on China's Future Environmental Laws

China sent a very clear message in 1994 that it is committed to improving its environment with China's Agenda 21.[52] Agenda 21 was financially supported by the United Nations Development Programme (UNDP) with the goal of mobilizing foreign aid to help with energy conservation and environmental protection.[53] Agenda 21 was adopted at the 16th Executive Meeting of the State Council of the People's Republic of China (PRC) on March 25, 1994.[54] Premier Li Peng notes in the *Preface*,

> There is a lot to be done and many difficulties to be surmounted in environmental protection and development. But I am convinced that, as long as all countries help each other like passengers in the same boat, conduct fruitful cooperation and work hard, it is possible to protect the global environment and expand the economy at the same time so that the earth will become a beautiful homeland where people live and work happily together.[55]

Peng is stating a wish for all to work together and is sending a clear signal to the rest of the world that China is willing to do its part. However, the question as to why a nation with such a commitment would build the Three Gorges Project that has continued to devastate the surrounding communities may be better understood within the context of a cost-benefit analysis.

For China, as Agenda 21 so addresses, there is a clear need to develop its natural resources as the nation as a whole continues to grow. The Introduction notes, "Sustainable development is a strategic choice that must be made by both developing and developed countries. For a developing country like China, however, the precondition for sustainable development is development."[56] What is made clear throughout Agenda 21 is that as China becomes more developed, it must use its natural resources to achieve sustainable development for an ever-growing population. Agenda 21 goes on to note,

> The overall goal for the development and protection of water resources is to combine the development and utilization of water resources with a full-scale saving of water to alleviate water supply crisis in cities and the

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[52] Sun, *supra* note 33, at 1022.

[53] *See* Lin Gan, *World Bank Policies, Energy Conservation and Emissions Reduction*, *in* China's Economic Growth: the Impact on Regions, Migration and the Environment 184, 198-99 (Terry Cannon ed., St. Martin's Press, Inc. 2000).

[54] China's Agenda 21 - White Paper on China's Population, Environment, and Development in the 21st Century (China Environmental Science Press 1994) (adopted at the Executive Meeting of the State Council, Mar. 15, 1994) (P.R.C.), *available at* http://www.acca21.org/cn/indexe6.html [hereinafter China's Agenda 21].

[55] *Id*. at 4 (quoting Li Peng, Premier, Address at the United Nations Conference on Environment and Development (June 12, 1992)).

[56] *Id*. § 2.1.

> countryside to maximize the economic, social, and environmental benefits to be obtained from utilization of water resources.[57]

The clear point that the Chinese government is making is that there exists a stark reality in balancing its wish to protect the environment, while at the same time dealing with the many needs of an ever-growing industrialized society. As has occurred in the United States and in countless other more-developed nations, China has been willing to sacrifice its environment for the goal of achieving sustainable growth.

However, there has been some very real criticism of Agenda 21. To begin, Sun has argued that the focus of much of China's recent actions has centered more on a wish to regulate foreign investment.[58] Gan has gone further by stating that "[t]he Agenda 21 project can be considered a case of window-dressing. It did not increase national capacity, but rather helped to raise positive responses from line ministries in matters relating to sustainable development."[59] The criticism here argues that one of the primary reasons for China's approving Agenda 21 was to please the developed world, especially those countries that may provide financial aid.

The goals that were created with Agenda 21 remain with the Chinese nation today. It clearly shows a wish to balance its environment with accommodating the rising need of sustainable development. While some of the criticism has come from those who see it as a tool for gaining foreign aid, that in itself should not be seen necessarily as wrong, but rather as a wish to gain further assistance, as Peng was so quoted,[60] in order to have as many countries as possible working together in a global effort to ensure sustainable development — *for everyone*.

D. Future of the Environment — *Rural versus Urban*

At the beginning of this section, the issue of rural versus urban control was brought up. This issue will play a major role in the way the next section addresses, more specifically, the Three Gorges Project. Like the United States, China must return to a clearer goal of finding a balance between development on the one hand, and the over-powering of the rural communities on the other. This trend will continue to grow as those in the rural and more-distant communities attempt to achieve a greater level of independence from their leadership in Beijing. The basic struggle is over what the local communities around the Three Gorges Project may see as an over-intrusive government versus the CCP's clear wish for a degree of sustainable development in a nation whose population will rise, even with the one-child policy.

What has become a tool, perhaps since the Qi Yuling case, is that the courts may turn to the Constitution for guidance and may force those high up in the leadership to take notice. This is especially true if the provisions found in Arti-

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[57] *Id.* § 14.33.

[58] Sun, *supra* note 33, at 1022.

[59] Gan, *supra* note 53, at 199.

[60] China's Agenda 21, *supra* note 54, § 3.10.

cles 9, 10, and 26 of the Constitution are enforced. Yet, as has been shown, while there are clearly provisions within the Chinese Constitution to provide for environmental protections, there remains the difficult question of whether the articles found in China's Criminal Code regarding the environment[61] may ever be used against any government official, especially in a megaproject such as the Three Gorges Project.

Enforcement, therefore, is critical for the future of the rural communities' environment. Even if a farmer or city resident receives a judgment in his or her favor, the local police and military are unlikely to assist in enforcing that judgment.[62] At this point, it seems doubtful that the articles contained within both the Constitution and China's Criminal Code will be used by the courts to limit megaprojects such as the Three Gorges Project. In this way, such articles within the Constitution and China's Criminal Code may prove to be *paper-tigers* with little, if any, real backing.

Articles such as those contained within the Constitution and China's Criminal Code may be important as the Three Gorges Project and others like it are put to use, and as problems develop as a result. For the average farmer there may be little that can be done with regard to the taking of his or her farms[63] or other land that the courts are willing to take a greater role in.

Beijing, for its part, has sought assistance through the creation of Agenda 21 and by showing the rest of the world that it cares about its environment. For this reason, it is somewhat surprising that the United States and the World Bank chose to turn their backs on the Three Gorges Project and not offer any funding. The project itself is moving forward. The question, as will be addressed next, is the full impact of what is in fact a *fait accompli*.

II. The Three Gorges Project

When completed, the lake behind the Three Gorges Project will extend for 600 km upstream and will have twenty-six 500 megawatts (MW) turbines.[64] It will be able to generate 18,200 MW and will be the largest power project in the world.[65]

Yet, there is a very real human and environmental toll that will perhaps make all other major projects in the world pale in comparison. As an article by *Archaeology* puts it, "The dam is the largest hydroelectric project ever undertaken; 13 cities, 140 towns, more than 1,600 villages, and 300 factories will be sub-

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[61] *See* Luo, *supra* note 47, at 176-80.

[62] *See* Kari M. Larson, *A Lesson in Ingenuity: Chinese Farmers, the State, and the Reclamation of Farmland for Most Any Use*, 7 Pac. Rim L. & Pol'y 831, 852-54 (1998).

[63] *See* Ding, *supra* note 20, at 11.

[64] *See* Shiu-hung Luk & Joseph Whitney, *Introduction*, to Megaproject: A Case Study of China's Three Gorges Project 3, 3 (M.E. Sharpe Inc. 1993).

[65] *Three Gorges Dam: New Round of Bidding Opens Amidst Controversy*, Int'l Rivers Network, June 12, 2003, *available at* http://www.waternunc.com/gb/IRN_3g_02_2003.htm.

merged."[66] Between 1.2 million and 1.9 million people will be displaced as a direct result of this project.[67] The human costs are very high, as are the environmental costs to the surrounding areas. It is feared that many of the factories and other submerged human habitat will cause prolonged environmental damage.[68]

The $36 billion project has been done without support from either the World Bank or the United States due, in large part, to the perceived environmental damage and huge human costs involved. This problem first surfaced during the Clinton Administration and continued through the George W. Bush Administration. Yet, one must wonder at what cost. The U.S. Export-Import Bank chose not to finance the dam[69] because of the concerns noted above, and in the process two of the world's largest lenders have been kept out of the largest dam project in the world.

To date, more than 640,000 people have been resettled.[70] It is this first issue of displacement that will be addressed here, before going on to the larger issues regarding the financial costs of this project and why the leadership in Beijing has been willing to sacrifice so much for its development. It will conclude by looking to the international issues regarding financing the Three Gorges Project, which will in turn allow this paper to end with a discussion of U.S.-China relations and the impact that this project will continue to have for both sides of the ocean.

A. The Displacement of Inhabitants — The Environmental Impact

The previous section addressed the legal rights regarding both constitutional and criminal laws that may be used against those who violate the environment. However, for many people around the Three Gorges Project, those rights may not come into effect. The Chinese government appears willing to take the land and displace the inhabitants around it to allow the project to move forward. The relocation of the people around the project violates both the World Bank resettlement policy[71] and the International Covenant on Civil and Political Rights.[72] Many of the promises regarding reimbursement and assistance in moving have clearly fallen short of the General Plan for Population Resettlement.[73]

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[66] Spencer P.M. Harrington, *Plundering the Three Gorges*, ARCHAEOLOGY, May 14, 1998, http://www.archaeology.org/online/news/china.html.

[67] *Id.*

[68] *Id.*

[69] *Id.*

[70] *See* INT'L RIVERS NETWORK, HUMAN RIGHTS DAMMED OFF AT THREE GORGES: AN INVESTIGATION OF RESETTLEMENT AND HUMAN RIGHTS PROBLEMS IN THE THREE GORGES DAM PROJECT 2 (2003), *available at* http://www.internationalrivers.org/files/3gcolor.pdf.

[71] The World Bank Operational Policies require that "displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs." INT'L RIVERS NETWORK, *supra* note 70, at 6 (*citing* World Bank Operational Policies, OP 4.12, paragraph 2A).

[72] *See id.* at 6.

[73] *Id.* at 8.

This has led to distrust by the local inhabitants who were forced to move and who saw their land taken from them. As noted above,[74] such takings are allowed and very little in the way of resettlement funding might be expected. An article by the *International Rivers Network* notes, regarding interviews with the rural residents affected by the government's desire to move them, "'We have been cheated,' is the phrase used repeatedly by everyone the researcher spoke to."[75]

The researchers state that those who have been moved have failed to gain any real compensation and were beaten when such efforts were made, noting, "Some protests have been tolerated but in other cases the organizers have been beaten and imprisoned."[76] As Peerenboom noted above, citizens must know and understand their laws before they can use them effectively.[77] Yet, as one article notes, "Compounding this feeling [of resentment] are the confusing and proliferating regulations that the local resettlement authorities have issued."[78] The regulations are confusing, and when they are used, the local inhabitants (at least according to this article) are beaten and abused. Thus, the gap between the rural inhabitants and the leadership in Beijing has only grown with each passing day that such abuse has continued.

The next issue that the rural inhabitants and those in Beijing must deal with is corruption. Premier Zhu Rongji, touring a project in December 1998, railed against "tofu" construction that had collapsed.[79] This is only one example of the corruption that is to be expected with a project where the central government in Beijing is so distanced from. According to one estimate, 473 million Yuan in the resettlement fund in 1998 (or roughly 12%) was embezzled, misappropriated, or illegally used.[80] With regards to corruption at the Three Gorges Project, according to McMillian,

> Perhaps one of the most incriminating condemnations—which is also among the most difficult to prove—is that officials have been cutting corners and pocketing the savings in the course of the massive public works scheme to house those misplaced by the Three Gorges dam in high-rise apartments in extensive new towns. This final wave of corruption could ultimately bring about life-threatening problems, all arising out of a project allegedly designed to save lives from flooding.[81]

Thus, those who are moved due to the Three Gorges Project are subject first to takings by the government often without compensation, and second, to having

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[74] *See infra* pp. 4-5.

[75] Int'l Rivers Network, *supra* note 70, at 11.

[76] *Id.*

[77] *See* Peerenboom, China's Long March, *supra* note 4, at 330.

[78] Int'l Rivers Network, *supra* note 70, at 11-12.

[79] *Id*. at 13.

[80] *Id*.

[81] Liam McMillan, *Floodgates of Corruption: China's Three Gorges Dam*, Global Corruption Report 2003, at 131 (2003), *available at* http://www.transparency.org/content/download/4382/26553/file/13_East_Asia_(Lu).pdf.

what money should go to them siphoned-off to corrupt officials. Grassroots resistance to the project is increasing,[82] but such resistance is put down very harshly.[83] As an article in Human Rights Watch/Asia noted, "Those attempting to stage protest demonstrations or to carry out acts of civil disobedience, moreover, will be summarily dealt with."[84] The same article noted that those who attempted to fight the project's existence were summarily stopped, and their rights for fighting its continuation suppressed.[85] Moreover, the article concluded, "[T]hose who opposed the project or opposed relocation had no means to obtain full information or demand redress for losses; and secret arrests of political dissidents in the area took place because of their opposition to the dam."[86] Thus, even where there might be laws to protect the farmers and other residents who have been affected by the Three Gorges Project, there is very little, if any, chance that actions will be taken against those injuring the farmers and residents affected or those who support them.

At the beginning of this paper it was proposed that the Three Gorges Project was made at the request of the Chinese leadership to address a growing need for sustainable development. In this one small section the bare realities of that development have come face-to-face with the starkness of greedy contractors, misplaced farmers, and limited funding. In the end, it has been the ones being moved — for now— that have suffered the greatest. There are in reality few actions that can be taken against the Chinese government, and what laws exist within either the Constitution or China's Criminal Code will most likely not be applied within the near future. The bare reality is one of suffering and of a distant government that should take a closer look at the realities of the *human* damage caused by the Three Gorges Project.

Yet, it is the future of China, as will be addressed within the next few pages, that may justify the huge costs now being taken by the government as it moves forward with the Three Gorges Project. If the project does in fact pay out and if human suffering can be limited, then China can stand firm in its decision to create the world's largest public-works project in modern history. The question addressed now is how this project will be financed and ultimately the effect that such a project will have on future relations with other nations of the world.

B. Foreign Financial Assistance

Perhaps few other issues could have stopped the Three Gorges Project from being built more effectively than the simple lack of funding. Part of that reasoning has come from the fact that neither the World Bank nor the U.S. Export-

[82] *See The Three Gorges Sam in China: Forced Resettlement, Suppression of Dissent and Labor Rights Concerns*, HUMAN RIGHTS WATCH/ASIA, Feb. 1995, at 9.

[83] *Id.* at 10.

[84] *Id.* at 13.

[85] *Id.* at 21.

[86] *Id.*

Import Bank is willing to finance the dam,[87] due in part to the human cost. Instead, financing came in part from the Export Credit Agencies (ECA's) that have extended over $1.4 billion in credits and guarantees for construction.[88] Another $830 million in bonds was underwritten by investment banks such as Morgan Stanley.[89] In addition, Morgan Stanley is a 35% owner of the China International Capital Corporation (CICC), which serves as the Three Gorges Project's financial advisor.[90]

The project is moving forward, but the ultimate question here is whether, at the end of the day, the dam will be able to pay for itself. There is a substantially limited need for the amount of electricity that will be generated from the Three Gorges Project, and while it will be partially financed by generated revenue, demand shortfalls threaten the success of the project.[91] All of this leads back to the question of whether the costs associated with the project will be worth the final price paid.

According to a recent report, additional revenue is being raised by attempting to help Yangtze Electric Power obtain A-share listings in the Shanghai Stock Exchange.[92] That same report noted,

> The money raised by Yangtze Electric Power's IPO will be spent on the last phase of the Three Gorges Project, to begin in 2004. The size of the issue is small, however, and no foreign investor has shown interest in buying a stake in the project which is expected to cost a total of $22 billion by the time construction draws to a close in 2009. Most of it will continue to be borne by loans from state-owned banks.[93]

As this report points out, the basic fear is that when the switch is finally turned on, the Three Gorges Project may not generate electricity,[94] perhaps due to the "tofu" construction that has been addressed above.[95] The other problem is that state owned enterprises being financed by the government may see their money

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[87] Ian Vázquez, Director, Project on Global Econ. Liberty, CATO Inst., Testimony before the U.S. Senate Comm. on Banking, Housing & Urban Affairs, Subcomm. on Int'l Fin.: The Export-Import Bank (July 17, 1997), *available at* http://www.cato.org/testimony/ct-iv071797.html; The Three Gorges Dam Project: Funding, http://www.mtholyoke.edu/~lpohara/Pol%20116/funding.html (last visited Oct. 23, 2009).

[88] INT'L RIVERS NETWORK, *supra* note 70, at 2.

[89] *China's Upper Mekong Dams Endanger Millions Downstream*, INT'L RIVERS NETWORK, Oct. 2002, at 3, *available at* http:// www.internationalrivers.org/files/03.uppermekongfac.pdf.

[90] Doris Shen, *Arrests, Intimidation Confirm Human Rights Abuses at Three Gorges Dam*, INT'L RIVERS NETWORK, Mar.29, 2001, *available at* http://www.threegorgesprobe.org/pi/3g/index.cfm?DSP=Content&ContentID=1952.

[91] Tashi Tsering, *Megoe Tso: The Damming of Tibet's Sacred Lake*, TIBET JUST. CTR., Apr. 2005, at 3 n.4, *available at* http://www.internationalrivers.org/files/megoetso.pdf.

[92] Yang, Jian, *Three Gorges: Dam Expensive*, CFO GLOBAL, May 9, 2003, *available at* http://cfos-react.com/article.cfm/3009230?f=related.

[93] *Id.*

[94] *Id.*

[95] INT'L RIVERS NETWORK, *supra* note 70, at 13; *see infra*, pp. 14-15.

evaporate as the project simply becomes too expensive.[96] Without such money, foreign investment banks are unlikely to sink more funding into a project that is already running into the billions of dollars. However, it is unlikely that the Chinese government would allow such a highly financed project as the Three Gorges Project to fall by the way side. Instead, it is more likely that payment will continue until the project is completed, with human and other financial cost continuing to oscillate.

C. China's Side

There is yet another reason that the Chinese government may continue with the Three Gorges Project — it might just work. For all the negative possibilities, there is still a chance that the huge megaproject will in fact provide the electricity that has been proposed; however, the difficulty of getting it from the dam to the cities and other areas that require it still remains. The project will generate one-ninth of China's "clean" electricity.[97] The burning of unwashed coal in China — a country with the world's largest coal reserves — has added a great deal of pollution to this nation.[98] The project's output will be the equivalent of burning 50 million tons of coal.[99]

Finding a replacement for coal is important due to China's primary reliance on it as an energy source.[100] Given that relying more heavily upon either coal or nuclear energy has severe environmental consequences, one must now ask whether the building of the Three Gorges Project, *if* completed and *if* it works as planned, is so wrong. Relying on hydropower[101] at a time of a continued population increase may in fact be a logical choice for a nation that has continued to suffer the ill effects of a long-history of using coal with the possible future consequences of using nuclear power plants. These ill effects have included a high-rate of respiratory disease among the Chinese.[102] To be exact, six out of ten of the most polluted cities in the world are in China.[103] The possible environmental effects may be catastrophic if China does not find alternative power to fuel its rising population.[104] Such a consequence could be based upon the continued usage of coal as a primary energy source.[105]

The changes that China has taken with regard to the building of the Three Gorges Project, while questionable to some, may well be the right choice within

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[96] *See* Jian, *supra* note 92.

[97] Shapiro, *supra* note 1, at 148.

[98] *Id.* at 148-49*; see also* Yardley, *supra* note 3.

[99] Shapiro, *supra* note 1, at 149.

[100] Ling Zhong, *Nuclear Energy: China's Approach Towards Addressing Global Warming*, 12 GEO. INT'L ENVTL. L. REV. 493, 494-95 (2000).

[101] *Id.* at 503-04.

[102] Gwynne Wiatrowski Guzzeau, *Indoor Air Pollution: Energy Problems in China's Residential Sector*, 11 GEO. INT'L ENVTL. L. REV. 439, 440 (1999).

[103] Sun, *supra* note 33, at 1016.

[104] *Id.* at 1016-17.

[105] *Id.* at 1018-20.

the inner circle of China's elites. The problems that could in theory be confronting them are the rising population (even with the one-child policy in place), and the continued reliance upon coal as the preferred energy source. The steps that they have taken with regard to the Three Gorges Project may be a simple wish to move their country to a safer and cleaner source of power for years to come. The Three Gorges Project may be just the start in that direction. As Sun concluded, "Power development in the world's most populous country need not mean environmental devastation."[106]

In conclusion, within this section this paper has looked at the ill effects of the devastation brought onto the rural population of the Three Gorges Project. What has been pointed out is that the pain and suffering is very real and will have to be addressed if China wishes to have continued support from both its domestic population and from the international community. To this effect, it will have to ensure the enforcement of its laws and regulations by both the local courts and those within the many governmental agencies supporting the project. If this is done, it is far more likely that the project itself will move forward and be completed, something that will make both its own state-owned banks and those of the international financial world that have put up the needed financial assistance to see this project through happy.

Finally, China itself may have a good reason to see the Three Gorges Project succeed due to the rising pollution caused by the continued reliance upon coal as a primary fuel source. Until nuclear energy becomes clean, which may never occur, the clean electricity generated from the Three Gorges Project might prove to be the best option available. However, this will only occur if the human costs can be kept to a minimum and if the project actually succeeds. The final question that this paper addresses is the effects that such a huge project will have on U.S.-China foreign relations for the coming years, especially given the fact that the United States has refused to help with the financing of China's largest public works project in modern history.

III. The Clinton Administration versus the George W. Bush Administration — The Future of U.S.-China Foreign Relations

The United States under former President Clinton continued the doctrine established by the previous administration and chose not to provide aid to the Three Gorges Project. Both former President Bush and President Clinton used an "engagement" approach to the People's Republic of China that called for pursuing a more stable international economic relationship.[107] The George W. Bush Administration took a far different approach and went on the attack. As Dumbaugh pointed out,

> The George W. Bush Administration came to office in January 2001 promising a tougher approach toward the PRC than that of any of its

[106] *Id.* at 1049.

[107] Kerry Dumbaugh, *China-U.S. Relations: Current Issues for the 108th Congress*, CRS Report for Congress, Sept. 15, 2003, at 20, *available at* http:fpc.state.gov/documents/organization/24664.pdf.

> predecessors. Seeking to distance themselves from the policies of "engagement" with China favored by American Presidents since 1979, Bush Administration officials promised to broaden the focus of American policy in Asia, concentrate more on Japan and other U.S. allies, de-emphasize the importance of Sino-U.S. relations in American foreign policy, and look more favorably on issues affecting Taiwan's status and security.[108]

Perhaps for the reasons stated above, the continued building of the Three Gorges Project will only add fuel to an already hot debate regarding trade, human rights, and other practices seen by the George W. Bush Administration as unjust. This might be especially true in a post-September 11th world and because China holds a permanent seat on the U.N. Security Council (and thereby also holds veto power to block any resolution it sees as unfair).[109] The U.S. and other Coalition Forces overthrowing of the Iraqi regime went directly against China's wishes. This act is only one example in a long stream of conflicts that have recently arisen between the United States and China. Yet, as Dumbaugh concluded, "Although the implications for future U.S.-China relations remain uncertain, some observers have suggested that the uncertainty itself has favored more stable U.S.-China relations by ensuring a degree of caution and non-provocation in how bilateral policies are crafted."[110] Thus, U.S.-China relations may have become more stable because the George W. Bush Administration chose to focus on other areas that it may see as more important, such as the continued internal conflicts in Iraq and the nuclear arms situation with North Korea.

A. Three Gorges Project

Given that China was on the backburner of the George W. Bush Administration's list of foreign policy issues, it will likely come as no surprise that there has been little said with regards to the Three Gorges Project. Yet, the failure to engage China with regards to the Three Gorges Project has put this nation at a major disadvantage with other Nation States. For example, in May 1996, under President Clinton, the Export-Import Bank chose not to offer financing.[111] As a direct result of this decision, the Three Gorges Project will have to do without assistance from Caterpillar and other major U.S. companies because U.S. laws prohibit these companies from obtaining export financing.[112] Instead, as Miller pointed out, the German government provided the major contracts for its industries as it relates to the Three Gorges Project.[113] As a direct continuation of the bias against this project on environmental reasoning, U.S. companies have been

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[108] *Id.* at 3.

[109] *Id.* at 3-4.

[110] *Id.* at 4.

[111] Alan S. Miller, *Environmental Policy in the New World Economy*, 3 Widener. L. Symp. J. 287, 307 (1998).

[112] Robert W. McGee, *Legal Ethics, Business Ethics and International Trade: Some Neglected Issues*, 10 Cardozo J. Int'l & Comp. L. 109, 142-43 (2002).

[113] Miller, *supra* note 111, at 307.

left largely out of the picture as other nations have stepped in to fill the financial gaps.

Such a gap will only widen as more non-U.S. companies enter China as a direct result of this nation acceding to the World Trade Organization (WTO) on December 11th, 2001.[114] Because the United States is China's biggest trading partner it is difficult to see why the United States chose to take such a hard stance toward the Three Gorges Project when it should have known that other nations would step in to fill its shoes. It is an "unwise strategy," as one report noted, to have the Bush Administration try to force change within the Beijing leadership.[115] The WTO, in conjunction with other nations and its supporters, will ensure that many of China's tariffs are reduced and many of its barriers are brought down. These changes should be done multilaterally, not unilaterally.

The basic problem for the George W. Bush Administration was how to explain to the American people why, when so many jobs are still being lost overseas, this Administration took the isolationist approach to China. Additionally, it was difficult to understand why this Administration would continue to subject China to detrimental treatment regarding environmental damage caused by the Three Gorges Project when many of the United States' own environmental laws are taking a major reduction—with the recent changes to the Clean Air Act as one example.[116]

In conclusion, the former Clinton Administration and the George W. Bush Administration came into office with very different goals as they relate to the U.S.-China relationship. President Clinton came into office with a clear goal of focusing on domestic issues, as compared to his predecessor.[117] While he struggled with such issues as the Tiananmen crisis and its aftermath,[118] China was never punished for its human rights violations that President Clinton "deplored."[119] Yet, it was during his tenure in office in 1996 that the United States Congress and the Executive chose not to allow the U.S. Export-Import Bank to provide financial assistance due to environmental concerns.[120] The relations with China improved once the Clinton Administration, with the assistance of Congress, allowed China to retain permanent Most Favored Nation status.[121] Yet, the

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[114] *See* U.S.-China Bus. Council, China's WTO Implementation: An Assessment of China's Second Year of WTO Membership 1 (2003), *available at* http://www.uschina.org/public/documents/2003/09/ustryeartwoassessment.pdf.

[115] David L. Lampton & Richard D. Ewing, U.S.-China Relations in a Post-September 11th World 33-34 (The Nixon Center 2002).

[116] *See* Russell Long, *Where There's Smoke, There's Pollution*, N.Y. Times, Feb. 21, 2004, at A15, *available at* http://www.nytimes.com/2004/02/21/opinion/21LONG.html.

[117] Nancy Bernkopf Tucker, *The Clinton Years: The Problem of Coherence*, *in* Making China Policy Lessons from the Bush and Clinton Administrations 45, 45 (Ramon H. Myers et al. eds., Rowman & Littlefield Publishers, Inc. 2001).

[118] *See id*.

[119] *Id*. at 46.

[120] *See infra* p. 16.

[121] *See* Donald D.A. Schaefer, *U.S. Foreign Policies of Presidents Bush and Clinton: The Influence of China's Most Favored Nation Status Upon Human Rights Issues*, 35 Soc. Sci. J. 407, 407 (1998).

Clinton Administration's policies concerning the Three Gorges Project do not appear to have changed.

The problem for the George W. Bush Administration when it came into office was that much of the damage regarding the limited access of U.S. companies to the Three Gorges Project had already been completed by the Clinton Administration. However, the Bush Administration's approach to the Chinese government, especially after China had acceded to the WTO, should be questioned. To begin, the Bush Administration took steps to "signal" that it was downgrading relations with China.[122] Those steps only made the relations with the leadership in China worse. While China clearly wished to continue its exports to the United States, the Bush Administration did not make things easier for U.S. companies that wished to do business in China. The Bush Administration's continued condemnation of human rights violations in China[123] and the continued conflict with Taiwan has only ensured that the leadership in Beijing will have reason to limit U.S. expansion into China, while keeping up its own exports to the United States.

Those limitations will directly impact the Three Gorges Project as other nations fill the shoes that the United States and the World Bank should be filling. In the process, this nation's leadership may have to remain on the outside of human rights violations with regard to the world's largest hydroelectric project — the Three Gorges Project.

IV. Conclusion

At the beginning of this paper it was surmised that the direction of China's leadership has hurt the rural areas surrounding the Three Gorges Project. That issue was explored in detail and has been shown to be largely true. At the same time, although the Beijing leadership, including President Jintao and the central committee of the NPC,[124] has chosen this path, it does not make it incorrect from the Chinese perspective. Understanding that this paper was written from a Western perspective, the writer can acknowledge that there are some very real reasons as to why such a megaproject would be undertaken and how the same project could hurt the local inhabitants, while isolating countries like the United States which may question the human rights abuses that have resulted in the process of building the Three Gorges Project.

In the end, it is both the local Chinese inhabitants in the rural areas near the Three Gorges Project and the U.S. taxpayers who have paid for a failure of the United States to give assistance to this dam. In the first instance, without the U.S. or World Bank oversight through business relationships, there is a greater possibility of human rights violations. By staying out of the project the U.S. government, including both Congress and the Executive, and the World Bank

[122] *See* Harry Harding, *American China Policy Under the Bush Administration Change and Continuity*, *in* U.S.-China Relations and the Bush Administration: A New Paradigm or Continuing Modalities 57, 59 (Arthur L. Rosenbaum ed., Keck Center for International and Strategic Studies 2002).

[123] *See* Michael Schaller, The United States and China: Into the Twenty-first Century 209-10 (Oxford University Press 2002) (1979).

[124] *See* The World Factbook: China, *supra* note 2.

have limited their ability to better the lives around the Three Gorges Project through the direct involvement of its financial sectors. At the same time, without U.S. financial assistance, U.S.-made products were not used, and the United States workforce has suffered as a direct result.

In addition, there was the continued strain that the George W. Bush Administration directed at U.S.-China relations. This Administration came into office with the clear view of classifying China as a competitor. Harding explained: "The Bush Administration entered office in 2001 charging that the Clinton Administration had spent its final years 'kowtowing' to Beijing, and describing China as a 'strategic competitor.'"[125] What this amounted to was—as can be expected—a strained relationship with the Beijing government. However, after the September 11th, 2001 tragedy that befell New York and this nation, the relationship eased up as President Bush focused on fighting terrorism and winning the war in Iraq. In the process, U.S.-China foreign relations were put on the backburner. This process has continued as causalities in Iraq increase, even with the prospect of a new Constitution and other western-styled changes, and as the fight for social security and other reforms are now well underway.

What this amounts to for the Three Gorges Project is the continuation of the same paths that the previous administrations have been on for some time—with limited input from either the United States government or the World Bank.

Once the Project is fully started, if it does not produce enough electricity, then China may be burdened with a *white elephant*. However, if all does go well, then the Three Gorges Project may be worth *all* the costs—human, environmental, and financial—associated with it. Only time will tell who was correct, and what the *real* costs of this project truly are—for both China and the rest of the world.

[125] Harding, *supra* note 122, at 58.